

State of California  
Business, Transportation and Housing Agency  
Department of Transportation

HIGHWAY FINANCIAL MATTERS  
Financial Adjustments  
(Assembly Bill 608)  
Resolution FA-02-02  
Action Item

Prepared By:  
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CTC Meeting: July 18, 2002

Reference No.: 2.5b.(8)

*Original Signed By:*  
ROBERT L. GARCIA  
Chief Financial Officer  
July 1, 2002

## **FINANCIAL ADJUSTMENTS (ASSEMBLY BILL 608)**

### **RESOLUTION FA-02-02**

#### **RECOMMENDATION**

The Santa Clara Valley Transit Authority is requesting a financial adjustment to an allocation pursuant to AB608. This project was allocated two years before the legislation was passed. Assembly Bill 608 was not intended to adjust county shares for projects allocated before the legislation was enacted. The Department recommends that the California Transportation Commission (Commission) not approve the following Resolution and request for an adjustment to the allocation.

#### **FINANCIAL RESOLUTION**

Resolved That:

Pursuant to Assembly Bill 608, the Route 87, Guadalupe Corridor project, EA 4874A1 allocated for construction on January 19, 2000 for \$26,815,000 be adjusted to \$16,060,000.

#### **BACKGROUND**

Assembly Bill 608 amended Section 188.8 of the Streets and Highways Code and was signed by the Governor on October 12, 2001. One provision of this legislation allows the Commission to adjust an allocation amount for a capital outlay project in the State Transportation Improvement Program (STIP) if the construction contract award amount for the project is less than 80% of the engineer's final estimate. The result would be an adjustment to the county shares. This new legislation is permissive and it is understood that the adjustments to the allocations are at the discretion of the Commission. One project has come forward with such a request for an adjustment. This project had a contract award amount 80% less than the engineer's final estimate. The allocation date for this project predates the enactment of the legislation.

DISCUSSION

State Route 87, Guadalupe Corridor, Allocation Date: January 2000

Construction for the Guadalupe Corridor, State Route 87, in Santa Clara County was allocated by the Commission in January 2000 for \$26,815,000. The project was awarded for \$15,160,000. An additional supplemental allocation was received in November of 2000 for \$900,000. The current contract allotment is \$16,060,000, 60% of the engineer's final estimate. Santa Clara Valley Transportation Authority (VTA) is asking for an adjustment to the allocation and therefore an adjustment to their county shares of \$10,755,000 million under AB 608.

# Memorandum

**To:** Chairman and Commissioners

**Date:** July 8, 2002

**From:** Diane C. Eidam

BOOK ITEM 2.5b(8)  
ACTION

## **Financial Adjustment for Award (AB 608)**

### **Issue**

Should the Commission approve a request from the Santa Clara Valley Transportation Authority (VTA) to make a \$10.755 million downward adjustment in a prior allocation, thus adding that amount to the Santa Clara STIP county share? The VTA is making this request citing a provision of AB 608 (2001) that permits the Commission to adjust a construction allocation when Caltrans reports a construction contract award for less than 80% of the final engineer's estimate (the basis for Commission construction allocations). This is the first request citing this provision of law, and the Commission's action may establish policy for future implementation of the provision.

### **Recommendation**

Staff recommends that the Commission not approve the requested allocation adjustment. The Department is recommending that VTA's requested adjustment not be approved, noting that the project allocation occurred before the enactment of AB 608, which became effective on January 1, 2002. Commission staff, while agreeing with the Department's recommendation, would recommend against approving any adjustment of an allocation so long after the time of award, finding this to be inconsistent with the intent of SB 45 (1997) and AB 608, regardless of the question of retroactivity.

### **Background**

Since the enactment of SB 45 (1997), the amount that has been counted against a county share for the construction of a project has been the amount programmed or allocated. AB 608 created a permissive exception. SB 45 based the count on the "engineer's final estimate of project costs, including construction engineering, presented to the commission for approval." AB 608 added, "If the construction contract award amount is less than 80 percent of the engineer's final estimate, excluding construction engineering, the department shall notify the commission and the commission may adjust its project allocation accordingly [underlining added]."

The general principle in SB 45 was that the construction cost should be based on Commission allocations and not on final expenditures, which might not be known for years. The purpose was to keep the share accounting simple and timely and to encourage good estimating for programming and allocation purposes.

The AB 608 provision for an adjustment based on award was a response to a concern sometimes expressed that counting the allocation amount could be unfair if the Caltrans engineer's estimate (on which allocations are based) were far off the amount bid. In such cases, regional and local agencies might feel they have unfairly lost the benefit of a low bid and award. The language in AB 608 deliberately made any such adjustment permissive for the Commission on a case-by-case basis, not automatic. The intent was to make this a one-time adjustment, with the consideration and possible approval of the allocation adjustment to be made at about the same time as the award, or as shortly thereafter as practicable. This was to preserve the concept that the count is based on an allocation prior to actual construction, not on a review of actual expenditures.

It was also intended that any adjustment would be made after a consideration of risk by Caltrans and the regional agency. Even where an award is far lower than the engineer's estimate, the engineer's estimate may well be the better estimate of final construction cost when change orders and claims are taken into account. Because a lower allocation reduces the cost increase allowance under Commission Resolution G-12 (which is free from the county share calculation), a downward allocation adjustment made at the time of award may end up costing a county share more in the long run if supplemental votes are required.

In the present VTA case, the allocation was made over 3 years ago. Making an adjustment at this late date could open the way to making adjustments indefinitely. It could actually discourage the identification and approval of adjustments made at award by providing an incentive for agencies to wait for years until all expenditures were known before requesting an adjustment.